

IC 23-17-16

Chapter 16. Indemnification

IC 23-17-16-1

Corporation defined

Sec. 1. As used in this chapter, "corporation" includes a corporation organized under or governed by this chapter and a domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

As added by P.L.179-1991, SEC.1.

IC 23-17-16-2

Director defined

Sec. 2. (a) As used in this chapter, "director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, an officer, a member, a manager, a partner, a trustee, an employee, or an agent of another foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other enterprise, whether for profit or not. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan.

(b) The term includes the estate or personal representative of a director.

As added by P.L.179-1991, SEC.1. Amended by P.L.8-1993, SEC.332.

IC 23-17-16-3

Expenses as including attorney's fees

Sec. 3. As used in this chapter, "expenses" includes attorney's fees.

As added by P.L.179-1991, SEC.1.

IC 23-17-16-4

Liability defined

Sec. 4. As used in this chapter, "liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses actually incurred with respect to a proceeding.

As added by P.L.179-1991, SEC.1.

IC 23-17-16-5

Official capacity defined

Sec. 5. (a) As used in this chapter, "official capacity" means the following:

(1) When used with respect to a director, the office of director

in a corporation.

(2) When used with respect to an individual other than a director under section 13 of this chapter, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) The term does not include service for any other foreign or domestic corporation or any partnership, limited liability company, joint venture, trust, employee benefit plan, or other enterprise, whether for profit or not.

As added by P.L.179-1991, SEC.1. Amended by P.L.8-1993, SEC.333.

IC 23-17-16-6

Party defined

Sec. 6. As used in this chapter, "party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

As added by P.L.179-1991, SEC.1.

IC 23-17-16-7

Proceeding defined

Sec. 7. As used in this chapter, "proceeding" means a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

As added by P.L.179-1991, SEC.1.

IC 23-17-16-8

Grounds for indemnification; conduct with respect to employee benefit plans; judgment, order, settlement, conviction, or nolo contendere plea not determinative of failure to meet standard of conduct

Sec. 8. (a) If an individual is made a party to a proceeding because the individual is or was a director, a corporation may indemnify the individual against liability incurred in the proceeding if:

(1) the individual's conduct was in good faith; and

(2) the individual reasonably believed:

(A) in the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in the corporation's best interests; and

(B) in all other cases, that the individual's conduct was at least not opposed to the corporation's best interests; and

(3) in the case of any criminal proceeding, the individual:

(A) had reasonable cause to believe the individual's conduct was lawful; or

(B) had no reasonable cause to believe the individual's conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests

of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (a)(2)(B).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not determinative that a director did not meet the standard of conduct described in this section.

As added by P.L.179-1991, SEC.1.

IC 23-17-16-9

Director wholly successful in defense of proceeding

Sec. 9. Unless limited by articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of a proceeding to which the director was a party, because the director is or was a director of the corporation, against reasonable expenses actually incurred by the director in connection with the proceeding.

As added by P.L.179-1991, SEC.1.

IC 23-17-16-10

Reasonable expense payments in advance of final disposition

Sec. 10. (a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if the following occur:

(1) The director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 8 of this chapter.

(2) The director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay an advance if it is ultimately determined that the director did not meet the standard of conduct.

(3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this chapter.

(b) The undertaking required by subsection (a)(2):

(1) must be an unlimited general obligation of the director;

(2) is not required to be secured; and

(3) may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in section 12 of this chapter.

As added by P.L.179-1991, SEC.1.

IC 23-17-16-11

Application to court; grounds for ordering indemnification

Sec. 11. Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt

of an application, the court may, after giving any notice the court considers necessary, order indemnification in the amount the court considers proper if the court determines one (1) of the following:

(1) The director is entitled to mandatory indemnification under section 9 of this chapter, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court ordered indemnification.

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 8 of this chapter.

As added by P.L.179-1991, SEC.1.

IC 23-17-16-12

Authorization of indemnification; evaluation as to reasonableness of expenses; procedures of board of directors

Sec. 12. (a) A corporation may not indemnify a director under section 8 of this chapter unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 8 of this chapter.

(b) The determination shall be made by one (1) of the following procedures:

(1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding.

(2) If a quorum cannot be obtained under subdivision (1), by majority vote of a committee designated by the board of directors consisting solely of at least two (2) directors not at the time parties to the proceeding. Directors who are parties may participate in the designation.

(3) By special legal counsel:

(A) selected by the board of directors or a committee of the board of directors in the manner prescribed in subdivision (1) or (2); or

(B) if a quorum of the board of directors cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board of directors. Directors who are parties may participate in the selection.

(4) By the members. However, memberships voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible. However, if the determination is made by special legal counsel, authorization of indemnification and evaluation as to the reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel.

As added by P.L.179-1991, SEC.1.

IC 23-17-16-13

Indemnification of officers, employees, and agents

Sec. 13. Unless a corporation's articles of incorporation provide otherwise:

- (1) an officer of the corporation, whether or not a director, is entitled to:
 - (A) mandatory indemnification under section 9 of this chapter; and
 - (B) apply for court ordered indemnification under section 11 of this chapter in each case;to the same extent as a director;
- (2) the corporation may indemnify and advance expenses under this chapter to an officer, employee, or agent of the corporation, whether or not a director, to the same extent as to a director; and
- (3) a corporation may indemnify and advance expenses to an officer, employee, or agent, whether or not a director, to the extent and consistent with public policy that may be provided by articles of incorporation, bylaws, general or specific action of the corporation's board of directors, or contract.

As added by P.L.179-1991, SEC.1.

IC 23-17-16-14

Purchase of insurance

Sec. 14. A corporation may purchase and maintain insurance on behalf of an individual who is or was:

- (1) a director;
- (2) an officer;
- (3) an employee or agent of the corporation; or
- (4) while a director, an officer, an employee, or an agent of the corporation, is or was serving at the request of the corporation as a director, an officer, a member, a manager, a partner, a trustee, an employee, or an agent of another foreign or domestic corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or other enterprise;

against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, an officer, an employee, or an agent, whether or not the corporation would have power to indemnify the individual against the same liability under section 8 or 9 of this chapter.

As added by P.L.179-1991, SEC.1. Amended by P.L.8-1993, SEC.334.

IC 23-17-16-15

Other rights to indemnification; reimbursement of expenses of appearing as witness

Sec. 15. (a) The indemnification and advance for expenses provided for or authorized by this chapter does not exclude other rights to indemnification and advance for expenses that a person may have under the following:

- (1) A corporation's articles of incorporation or bylaws.
- (2) A resolution of the board of directors or of the members.
- (3) Any other authorization, whenever adopted after notice, by a majority vote of all the voting members of the corporation.

(b) If:

- (1) articles of incorporation;
- (2) bylaws;
- (3) resolutions of the board of directors or of the members; or
- (4) other duly adopted authorization of indemnification or advance for expenses;

limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles of incorporation, bylaws, or resolution of the board of directors or of the members, or other duly adopted authorization of indemnification or advance for expenses.

(c) This chapter does not limit a corporation's power to pay or reimburse expenses incurred by a director, an officer, an employee, or an agent in connection with the person's appearance as a witness in a proceeding at a time when the person has not been made a named defendant respondent to the proceeding.

As added by P.L.179-1991, SEC.1.